



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-031

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. Generally, the rule would benefit from reorganization to reduce the degree to which subsections, paragraphs, and subdivisions are divided into smaller units. Throughout, the rule contains subsections and paragraphs that consist only of a title and contain no introductory material. (See, for example, s. Trans 327.14 (4), titled FAILURE TO CERTIFY OR PROVIDE MEDICAL CERTIFICATE, which is immediately divided into two paragraphs.) The department could eliminate a layer of subdivision in these places by placing substantive text within the subdivisions or paragraphs currently consisting only of a title. This type of revision could also help the department avoid using subdivision paragraphs (see, s. Trans 327.14 (3) (b) 1. and (6) (b) 1.), which should not be used unless absolutely necessary. [s. 1.03 (2) (f), Manual.]

b. The rule should be reorganized to more clearly set forth the requirement to provide a medical certificate and to consolidate related provisions. As presently written, this requirement is scattered and referenced throughout the rule. Section Trans 327.14 (3) (a), describing what types of driving operations may be certified, provides that persons certifying certain tiers of operation must provide a medical certificate to the department. Section Trans 327.14 (4) directs the department to deny as incomplete an application that does not contain a required medical certificate. Section Trans 327.14 (5) (a) provides that certain persons may not operate a commercial motor vehicle in interstate commerce unless he or she has *provided to the department* a medical certificate, and s. Trans 327.14 (5) (c) provides that certain persons must *possess* a medical certificate when operating a commercial motor vehicle. To accomplish the suggestion to reorganize and clearly set forth the medical certificate requirement, the department

might consider reorganizing the rule so that the rule-making creates two new sections: one that pertains to the obligation to certify a tier or operation; and one that pertains to the obligation to file a medical certificate.

c. Throughout, the rule would also benefit from stating requirements more directly, and ensuring they are placed in order of importance. For example, the central substantive requirement of the rule—that a holder of a commercial driver’s license certify a tier of operation—is inserted into the middle of s. Trans 327.14 (3). This substantive directive should be the first component of the subsection. [s. 1.02 (3) (c), Manual.]

d. Similarly, the department should restructure s. Trans 327.14 (5) (d) so that the substantive requirements are not buried beneath multiple, alternative dependent clauses. [s. 2.001 (1), Wisconsin Bill Drafting Manual, (“[U]se short, simple sentences and ... avoid the unnecessary use of dependent clauses, complex sentences, or other complicated sentence structures.”)]

e. The department should ensure that each portion of the rule is consistent about who it applies to. For example, s. Trans 327.14 (6) (b) is titled “how done”—referring, it appears, to the department’s obligation to downgrade licenses—and subd. 1. of this paragraph directs the department to do certain things. However, subd. 2. of the same paragraph does not refer to anything the department is to do, but instead states that “a person whose CDL is downgraded ... may retain an operator’s license” Likewise, the first two paragraphs of s. Trans 327.14 (6) relate to requirements imposed on the department. However, the first two subdivisions in par. (c) of that subsection describe how a person whose CDL has been downgraded may apply for reinstatement. Subdivisions 4. and 5. of that paragraph impose obligations on the department, and subds. 3. and 6. are general statements.

f. Similarly, the department should also consider whether the subdivision and paragraph titles are necessary and whether all of the material below a given title relates to that title. Throughout the proposed rule, the format of titles, particularly subdivision titles, should conform to the format prescribed in s. 1.05 (2), Manual.

g. The rule may also benefit from consolidating certain provisions. Examples of provisions that might be consolidated are: s. Trans 327.14 (5) (b) 2. and 3., and s. Trans 327.14 (6) (a) 1. and 2.

h. The proposed rule states that “words and phrases defined in ch. 340, Stats., have the same meaning in this chapter unless a different definition is specified.” This phrase appears to be redundant because a similar phrase is already included in s. Trans 327.01 (1).

i. The department has included definitions within the substantive provisions describing which types of operations may be certified under the rule. “Substantive provisions are never incorporated as part of a definition.” [s. 1.01 (7), Manual.] The department might instead consider including, within the definitions sections, definitions for Tier 1 Operation, Tier 2 Operation, Tier 3 Operation, and Tier 4 Operation. This would also obviate the need to separately define “excepted” and “non-excepted” because those concepts could be incorporated

into the definitions for the four tiers of operation. The department should also choose one way to refer to each of these tiers of operation. In the proposed rule, the department refers to “Tier 1, or nonexcepted interstate” as interchangeable descriptions of the same type of operation. The department should choose one term to use to describe each tier of operation. Similarly, throughout the rule, the department refers colloquially to “type or types of driving operations”. However, the formal term the rule uses for these types of driving operations is “tiers”, so it should refer to them consistently as such. For example, “A person shall certify to the department one type of driving operation...,” should be “A person shall certify to the department the tier of operation in which he or she intends to engage.”.

j. Is it necessary to define “commercial learner’s permit”? The term appears self-explanatory and the definition does not seem necessary to understanding the one reference to the term in the rule. Likewise, is it necessary to define “CDLIS driver record”? If CDLIS were written out as commercial driver licensing information system, this phrase would also appear to be self-explanatory.

k. The department has included a subsection titled “purpose and scope” after the definitions subsection in the rule. When a purpose statement is included, it should be the first item in a rule section. [s. 1.02 (3) (a), Manual.] However, the department might also consider eliminating this statement because it is not necessary. [s. 1.02 (3) (a), Manual.] It is unclear what the words “and scope” add to this subsection. If the department retains this subsection, “creates the administrative requirements”, should be changed to “establishes the process”.

l. Is the first sentence of s. Trans 327.14 (3) (b) 2. necessary? Section Trans 327.14 (3) (b) 1. requires a driver to certify his or her tier of operation when triggered by specific events, so it would appear axiomatic that those are the only instances when he or she is required to certify.

m. Section Trans 327.14 (3) (c) should be deleted. This paragraph is redundant because the obligations it imposes are also imposed under s. Trans 327.14 (5) (b). These requirements are more appropriately included in sub. (5) because that subsection pertains to the department’s obligations.

n. It is unclear what s. Trans 327.14 (5) (b) 1. requires. That subdivision directs the department, after receiving a medical certificate from a Tier 1 driver, to “record the certification on the person’s driving record”. What “certification” is the department required to record? If it is that the driver has filed his or medical certificate, the rule should say that.

o. Throughout the rule, the department has included provisions stating what the rule does not do. (See, for example, the first sentence of s. Trans 327.14 (6) (b) 2.) Generally, a rule’s provisions should be set forth as affirmative requirements, not as statements about what a rule does not do. The department should consider whether any of the provisions stating what the rule does not do are necessary.

p. The department has included three “Notes” within the proposed rule. It appears that these notes contain substantive requirements. “Notes may not include substantive requirements and are not part of the substantive law created by rule”. [s. 1.09 (1), Manual.]

q. Is it necessary to amend the title of ch. Trans 327 to reflect the addition to this chapter of the requirements contained in this rule-making?

r. In several instances in the proposed rule, the department contemplates activity that must occur by a license holder after a certain date but also before a certain date, each of which are currently in the past (in particular, certain references to January 30, 2014). What does the department intend for the effect of these provisions? Does compliance with these activities constitute impossibility? Have parallel regulations been in existence that should be referenced in the related statute or rule portion of the analysis?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department may wish to reconsider its extensive use of initialisms throughout the rule; e.g., CDL, CDLIS, FMCSA. “Acronyms or other abbreviations should be used only to improve readability.” [s. 1.01 (8), Manual.] Abbreviating “commercial driver’s license” to CDL might make some sense because the term is used so frequently in the rule and is also often used in common parlance. However, creating a definition of FMCSA (for federal motor carrier safety administration) when the term is used only four times throughout the rule is an uneconomical use of the definitions section and does little if anything to improve the readability of the rule. The same comment applies to the use of CDLIS (for commercial driver licensing information system) and CLP (for commercial learner’s permit). The Wisconsin statutes refer to the commercial driver licensing information system several times and spells out the name of the system on each occasion. Finally, the department could avoid the necessity of defining “Tier 1 driver” by changing the textual references from “Tier 1 driver” to something like, “a person who has certified he or she is engaged in Tier 1 operation” or “a person engaged in Tier 1 operation”. Note that in these examples it is unnecessary to refer to “drivers” because it follows that any person engaged in these operations is a driver.

b. Throughout the rule text, the department should change references to “driver” to something more precise. The rule does not affect drivers in general; it affects persons who hold commercial driver’s licenses.

c. Throughout, the rule would benefit from eliminating surplus language. For example, in s. Trans 327.14 (6) (c) 4., “may be required to charge fees” should be “may charge a fee”.

d. Throughout, the department should also revise to remove colloquialisms. For example, “due to” should be “because” in s. Trans 327.14 (6) (c) 2., and the rest of that sentence revised accordingly. The reference to “license upgrade” in s. Trans 327.14 (3) (b) 1. d. is also colloquial and appears to be surplus language.

e. In the definition of “H endorsement”, the words “hazardous materials” are unnecessary because the endorsement is fully described in the cross-referenced statute.

f. The definitions of “excepted” and “nonexcepted” are confusing because the definitions section appears to define these adjectives independently of the objects they modify, as terms of art, in the substantive provisions of the rule. This confusion could be eliminated by

incorporating these terms within definitions for each tier of operation, as suggested above. In the event the department retains the definitions of “excepted” and “nonexcepted,” it should note that the word “means” is missing from the definition of excepted. Additionally, the definition in the proposed rule of “non-excepted” is circular: “non-excepted means ... not excepted”. In s. Trans 327.14 (5) (e), the department should revise to avoid using the word “deem”. [s. 2.01 (9) (f), Wisconsin Bill Drafting Manual.] “Consider” may be used instead.

g. In s. Trans 327.14 (7), “appropriate” should be “applicable”. Additionally, par. (a) of that subsection directs the department to provide written notice of the items contained in subds. 1. through 3. Each of those subdivisions, though, also refers to “notice,” so the second reference to “notice” in each subdivision is redundant. Finally, in par. (a), “Department” should not be capitalized.

h. Section Trans 327.14 (8) is grammatically problematic because the introductory clause refers to what the “online method” must do, but each of the clauses that follow refer to what various people must do. The phrase “online method” is also vague.

i. A rule and rule summary should avoid using “legalese”. For example, the department should revise to remove the word “herein” in the comparison with rules in adjacent states. [s. 2.01 (9) (d), Wisconsin Bill Drafting Manual.] Throughout the rule analysis and in at least one place in a note to the rule, the department also uses the word “such” in place of an article. (See, for example, the note within sub. (5) of the rule.) This should be avoided. [s. 2.01 (9) (c), Wisconsin Bill Drafting Manual.]

j. The rule analysis contains some minor typographical errors.